

SB 1383 Compliance and Enforcement Concepts

The waste sector aspects of SB 1383 ultimately require California to reduce the disposal of organic waste by 75 percent, and to recover 20 percent of edible food currently disposed, by 2025. Achieving these targets is the shared responsibility of the public, industry, local governments, and the state. The general enforcement structure and concepts outlined here reflect that shared responsibility. A robust system for ensuring that all parties implementing the regulations are in compliance is essential to maintaining fairness and ensuring the success of SB 1383. CalRecycle is proposing an oversight structure that retains local control for aspects of the regulations, and reserves state oversight for appropriate situations. CalRecycle appreciates the robust feedback received thus far on information presented at previous workshops. CalRecycle is soliciting feedback on the more detailed concepts presented below to help develop and refine what may be included in the regulations.

I. Entities with Potential Implementation Obligations

In the June 2017 workshops, CalRecycle presented a series of concepts related to organic waste collection, state minimum standards for organic waste processing at solid waste facilities, and edible food recovery. Those concepts detailed a series of regulatory activities and the entities that could implement those activities. For more information on the regulatory concepts presented thus far, please see the documents on the [June workshop webpage](#).

A. Entities with a Potential Implementation Role(s) details discussed in June workshops

1. Jurisdictions
2. Haulers
3. Solid waste facility (SWF) owners/operators
4. Local enforcement agencies
5. Edible food recovery organizations
6. Generators (organic waste generators and edible food generators)

II. Potential Compliance and Enforcement Structure

To ensure the state is successful in achieving the SB 1383 targets, CalRecycle is outlining a potential structure for oversight of entities with regulatory obligations. The proposed structure places much of the day-to-day monitoring of local implementation with local government agencies (jurisdictions and Local Enforcement Agencies (LEAs)). CalRecycle's primary role would include oversight of jurisdictions, LEAs, and generators outside of a jurisdiction's oversight authority. CalRecycle would have a secondary role in overseeing entities that are supervised by jurisdictions. For example, CalRecycle could exercise direct oversight over regulated entities if the responsible LEA or jurisdiction is failing to exercise adequate oversight or a situation cannot be fully addressed by a single local government entity (i.e. cross-jurisdictional issues).

A. Compliance and Oversight Roles

1. CalRecycle

Direct oversight:

- a. LEAs
- b. Jurisdictions
- c. Generators outside the jurisdiction of a city and county (or a city/county Joint Powers Authority (JPA))

Secondary oversight:

- a. Solid waste facility owners/operators
- b. Generators
- c. Haulers
- d. Food recovery organizations

2. Jurisdictions
 - i. **Direct oversight:**
 - a. Generators
 - b. Haulers
 - c. Food recovery organizations
3. Local Enforcement Agencies
 - i. **Direct oversight:**
 - a. Solid waste facility owners/operators

B. Duties of Entities with Direct Oversight

1. CalRecycle Oversight
 - i. Oversight of jurisdictions
 - a. Monitoring of a jurisdiction's implementation of regulations
 - b. Oversight of a jurisdiction's local monitoring/enforcement procedures
 - ii. Oversight of LEAs
 - a. Oversight of LEA inspection and enforcement of state solid waste laws and regulations (*existing*)
 - iii. Oversight of generators outside the jurisdiction of a city and county (e.g.State Agencies)
 - a. Monitoring implementation of regulations
2. Jurisdiction Oversight
 - i. Oversight of generators, haulers, and edible food recovery organizations
 - a. Regular monitoring of regulatory compliance for entities within a jurisdictions' oversight authority (generators, haulers, edible food recovery organizations)
 - b. Initiate compliance actions outlined in regulations when local violations are discovered, or if CalRecycle notifies the jurisdiction of a local violation
3. LEA Oversight
 - i. Existing oversight of solid waste facilities
 - a. Implement LEA Enforcement Program Plan (EPP) which outlines how the LEA will carry out permitting, inspections, and enforcement activities required by the law and regulations (including new state minimum standards established in SB 1383 regulations)

C. Entities Subject to Oversight

1. Solid Waste Facilities
 - i. Oversight by LEAs and CalRecycle
 - a. Regular monthly inspections by LEA (*existing practice*)

- b. Periodic joint inspection of solid waste facilities by CalRecycle and LEA (*existing practice*)
- c. Potential for CalRecycle direct oversight and action as enforcement agency in place of LEA when there is a failure to properly monitor or act (*existing practice*)

2. Generators of Organic Waste

- i. Oversight by jurisdictions and CalRecycle
 - a. Level of minimum random and complaint based monitoring by jurisdictions
 - b. Potential referral to CalRecycle for large generators that span multiple jurisdictions
 - c. Potential for CalRecycle to initiate direct oversight and action when there is a failure to properly monitor or act by the jurisdiction (*similar to existing practices with LEAs and SWFs*)

3. Haulers of Organic Waste

- i. Oversight by jurisdictions and CalRecycle
 - a. Jurisdiction monitoring for compliance with regulatory standards
 - b. Potential for CalRecycle direct oversight and action when there is a failure to properly monitor or act by the jurisdiction. (*similar to existing process with LEAs and SWFs*)

III. Potential Compliance & Enforcement Procedures

SB 1383, unlike AB 939, does not specify a method for compliance and enforcement procedures at the state or local level. CalRecycle is outlining a series of existing and potential approaches for initiating compliance and enforcement procedures.

A. Potential State Procedures

1. Progressive Compliance

- i. Submit notice to comply (potentially including a compliance schedule i.e. 30 days to comply)
- ii. Submit second notice of noncompliance (if violation still exists)
- iii. Submit Accusation to Office of Administrative Law for penalties

2. Inventory of Non-Compliant Entities

- i. Applied when an entity is documented with repeated violations
- ii. Existing practice for SWFs (see existing [Title 14 regulations related to SWFs](#))

B. Potential Local Procedures

1. Local Enforcement Agency (*existing procedures*)

- i. Notice of Violation
- ii. Compliance Schedule
- iii. Cease and Desist Order
- iv. Notice and Order

- v. Issue penalties

2. Jurisdiction (potential procedures)

- i. A jurisdiction has a variety of tools within its enforcement purview. CalRecycle is seeking feedback on appropriate tools that can be identified in regulations
- ii. Potential tools that could be included as remedies: notices of violation, penalties, revoking of a license, certification or permit, referral to state for compliance

IV. Indicators of Compliance and Factors Relevant to Enforcement Decisions

CalRecycle is seeking feedback on mechanisms and indicators of compliance that could be built into the regulatory structure. Additionally, CalRecycle is seeking feedback on relevant factors to be considered in determining compliance actions. Included below are a sample of items that could be included and are utilized in many existing compliance and enforcement systems.

A. Methods for Monitoring and Determining Compliance (at the state and/or local level)

- 1. Review of reports submitted by entities (*see 8.11 Reporting Concept Paper*)
- 2. Complaints and investigations
- 3. Inspections by state or local oversight body (LEA/jurisdiction)
- 4. Evaluation of plan implementation to determine compliance
- 5. Independent and random audits

B. Factors Relevant to Compliance and Enforcement Decisions

- 1. Efforts to correct violations by a noncompliant entity
- 2. Efforts by the agency tasked with oversight to correct violations by a noncompliant entity
- 3. Whether local enforcement procedures have been exhausted
- 4. Factors outside the control of a noncompliant entity (i.e., a facility is temporarily shut down)
- 5. Severity and length of violations

V. Exemptions and Alternative Compliance Models

SB 1383 allows CalRecycle to establish different levels of requirements for local jurisdictions based on a variety of relevant factors. CalRecycle is seeking feedback on unique circumstances that could be considered as factors that would allow a jurisdiction to be eligible for a different level of requirements.

A. Factors to Consider

- 1. Very low population density? Existing and established thresholds?
- 2. Can a jurisdiction demonstrate a reduction of organics going to the landfill through an alternative model?